

**UNITED STATES DEPARTMENT OF COMMERCE****Unit d States Pat nt and Trademark Offic**

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Washington, D.C. 20231

H012

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/952,475 03/09/98 MORIMATSU

F 2520-109P

002292 IM52/0516
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EXAMINER

CORBIN, A

ART UNIT

PAPER NUMBER

1761

16

DATE MAILED:

05/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

081952,415

Applicant(s)

MORIMATSU ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 3-20-01
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 3, 4, 7, 10-13, 16, 17 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 3, 4, 7, 10-13, 16, 17 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The request filed on March 20, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/952,475 is acceptable and a CPA has been established. An action on the CPA follows.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3, 4, 7, 10-13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giese.

Applicant is referred to paragraph no. 7, Paper No. 5 and paragraph no. 6, Paper No. 8.

4. Claims 3, 4, 7, 10-13, 16 and 17 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Bonkowski in view of Helmer et al. Applicant is referred to the last sentence in each of paragraph nos. 8 and 9, Paper No. 5 and paragraph no. ⁶ Paper No. 8.

5. Applicant's arguments filed March 20, 2001 have been fully considered but they are not persuasive. Although Test variable 1 ⁱⁿ Tables 6 and 7 ^{Appellant's spec.} shows improved ~~lower~~ cholesterol lowering results as compared with Test variables 2 and 3 ^{said} in Tables 6 and 7, as ^{Appellant} applicant ^{argues} contends, neither Test variable 2 nor 3 includes soy protein, as claimed by ^{Appellant} applicant and disclosed by both primary references. Moreover, neither Test variable 2 nor 3 includes both animal fat and vegetable oil, regardless of the content of each, as disclosed in Giese. Thus, there

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is no factual evidence of record to support ^{applicant's} applicant's conclusion that equal amounts of animal fat and vegetable oil are critical since there are ^{no} tests of record showing cholesterol results where different contents of animal fat and vegetable ~~protein~~ ^{oil} are used in meat products. What cholesterol results would occur in a meat product containing soy protein and different contents of animal fat and vegetable oil?

Further, Giese suggests substitution of vegetable oil for animal fat, despite applicant's belief to the contrary.

6. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will

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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday - Friday from 8:30 AM to 7:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Arthur Corbin/om
May 15, 2001



ARTHUR L. CORBIN
PRIMARY EXAMINER